

BOARD OF SELECTMEN/MEETING OF OCTOBER 12, 2010  
HARMONY HALL

PRESENT – George A. Malliaros, Chairman, Joseph DiRocco, Jr., Vice-Chairman, Cathy Richardson, Clerk, Robert O. Cox, John J. Zimini, Glen Edwards, Asst. Manager/Town Planner and Barbara Souza, Recording Secretary.

The Chairman called the meeting to order at 7:00 p.m.

ABSENT – Dennis E. Piendak, Town Manager was recorded absent.

The Pledge of Allegiance was recited followed by a moment of silence being observed for all those who have paid the ultimate sacrifice for this Country and also for those serving in the military particularly in Afghanistan and Iraq.

WARRANT APPROVAL – Motion by Mr. DiRocco and seconded by Mr. Cox, **it was unanimously voted to approve.**

APPROVAL OF WARRANT FOR STATE ELECTION – Motion by Mr. DiRocco and seconded by Mr. Cox, **it was unanimously voted to approve.**

APPROVAL OF WARRANT FOR NOVEMBER ANNUAL TOWN MEETING – Motion by Mr. DiRocco and seconded by Mr. Cox, **it was unanimously voted to approve.**

Town Manager's Report – Mr. Edwards reported that last week, the State Department of Revenue announced the Community Preservation Trust Fund disbursement to Dracut; Dracut will receive \$177,558 that represents 27.2 % match of the local amount that was collected for CPA. The first few years we were up 100% and then dropped down to the 60's; last year it was mid 30's and now we're at 27.2. The town auction to sell the house at 67 Honora Avenue which was scheduled for Saturday, October 30<sup>th</sup> has been cancelled due to some title issues that need to be cleared up. The new date for the auction will probably be sometime next spring. 91 Sesame Street – The Board of Health received the Environmental Assessment Test Results this afternoon; the results are being forwarded to Attorney Hall to review. He (Edwards) spoke to Attorney Hall and he said he would either prepare a letter to the Selectmen recommending a course of action on what to do with those test results or he will request an executive session to go over it with the board of Selectmen.

Town Manager's Absence - Mr. Edwards reported that Mr. Piendak is at home recovering from a medical issue; he will return very soon and said we all wish him well.

Sesame Street – Mr. Cox referring his question to Mr. Edwards said we actually have nothing to report on Sesame Street tonight because we don't have anything from Attorney Hall. Mr. Edwards said there is a report in the board's packet on what happened the last two weeks; unfortunately the timing on receiving these results is poor and in the last week he was kind of notifying the neighborhood of what he thought the process would be in terms of getting the review. Mr. Edwards said he is sure they (neighbors) are very anxious as well as we all are to get the results, especially them because they live with the situation.

Mr. Cox said the only reason he asked is because he notices some of the residents here tonight and we really have no further information.

APPOINTMENT – DATV BOARD OF DIRECTORS – Present were John Lyons, Robert Corey, Mike McNamara and Gary Meuse. Mr. Lyons proceeded with his remarks noting that the access corporation is in their fourth year and they've started looking at their bylaws as filed with the Attorney General's office and in so doing over the past several months, they find that there are some items in there with a lot of typos, a lot of the paragraphs really belong under the members section versus the Board of Directors section. Also the key one has to do with the procedures to amend any of the bylaws and noted that the Board has been supplied with a copy of each of the two articles they are looking to amend; it shows what the current bylaws stipulate and the second part shows the amendment being proposed. Mr. Lyons proceeded to explain the first one which has to do with "qualification for voting membership" and want to clarify it to be least 18 years of age; the article that they are currently working under is silent to that and they are looking to amend that. Mr. Lyons explained the three-step process that is required before any amendments can be made, the third step being that it be brought before the Board of Selectmen. He said other Access Corporations in the area have questioned why that is in there because it does put the Board of Selectmen in an awkward position that they are now being involved in the operations of the Access Corp and said certainly the Selectmen have enough to do without running an access corp. Mr. Lyons said those are the two that are before the board now, one on the requirement of at least 18 years of age to hold membership in the Board of Directors and the second one is waiving the requirement that we have to come back before the Board of Selectmen to get approval to amend a bylaw.

Mr. Malliaros asked if they were looking for the board to endorse the proposals.

Mr. Lyons said he would be requesting two motions, one motion to approve the amendments as presented and written to the board.

Mr. Cox indicated that he would make that motion.

Mr. DiRocco said he has a few questions and said he can probably understand the 18-years of age which goes pretty much without saying but on the other one; he doesn't know that that is a big deal to have to come here to the board as not that many bylaw changes are made.

Mr. Lyons said the only reason they have to do that is the fact that their current bylaws they are operating under right now require them to do that and said that's the problem they have; anytime they want to amend the bylaws they have to come here before the board to get the authorization after they have already voted themselves, had public hearings and after going before the annual meeting of the membership of the corporation and then the third step is they have to come and ask this board's permission to amend the bylaws. That is what they don't want to do in the future and that is why they are looking to waive that out of the current bylaws.

Mr. DiRocco said he doesn't recall them coming before this board too often. Mr. Lyons said this is the first time in four years that they have come to amend the bylaws. Mr. DiRocco said that is why he doesn't see where it is that big a thing. Mr. Lyons said the only other time is at the end of every year they have to come before the board and make a financial report and at that point in time any questions can be asked. He said even though the records are filed with the Attorney General's office, it is still a requirement of the Access Corp to come before the Licensing Authority.

Ms. Richardson asked if there was some kind of requirement initially when the corporation was formed that we would have had to sign off on any particular or ongoing licensing issue.

Mr. Lyons said that actually these are the (Selectmen's) bylaws; they all worked on them together back in 2006; Town Counsel had to get the Articles of Organization as well as the bylaws and a few other legal documents to bring to Boston so that the corporation could be put into effect. These particular bylaws had some things in there that they just didn't review closely enough before they were sent but the ones they feel

are really meaningful to them, they want to be able to clarify them initially. Once they do this tonight, this board won't have to see them again about amending bylaws as they can clarify any of the problems that they find referring to the membership and the Board of Directors.

Mr. Zimini said he will explain why he has been silent and hadn't thought about it until this evening, but being an elected member of the access board and being elected by the members of the access corporation, he feels he may have a conflict of interest and that is why he is not going to participate in the discussion, nor is he going to vote.

Mr. Lyons continued to say that he would like to assure the board that the amended bylaw will be more in line with the other communities in the Merrimack Valley. Mr. DiRocco asked Mr. Edwards if he knew where the Manager stood on this. Mr. Edwards replied that he does not know what his intentions are with regard to this. Mr. Lyons said that when this was first brought up last year, the Town Manager, who is a member of the corporation, was there and he voted in favor of it; it was a unanimous vote of the membership at that time. Mr. Lyons added that Mr. Piendak is fully aware of the two requests being brought before the board.

Mr. Cox stated that he will stand by his original motion; we asked this board to volunteer their time and have done an admirable job and said it seems like housekeeping to him. He feels we entrusted these people to do the right thing; they have proven that they have done the right thing and feels we should vote to approve this and send them on their way.

Dr. (Michael) McNamara commented that what it really does is it places the running of the organization to the actual members; the members are the ones who create the bylaws. Being brand new, they did check with other communities in 2006 but as time goes on, as the organization has grown, they realized that the members are not the ones running the organization if things have to be approved by the Board of Selectmen and feels that is just another way to look at it.

Mr. DiRocco said he doesn't quite agree with that; your board is bringing it back to us and all we are is another step in the approval process and doesn't know what it hurts other than coming here tonight.

Following a lengthy discussion Dr. McNamara commented that it doesn't change the fact that the Board of Selectmen is the Licensing Authority.

Mr. Lyons said when you negotiate, the big thing on that is the funding; that's the big thing in the contract that will be coming up in another five years and said that's a lot of authority in the hands of the Board of Selectmen. Mr. Lyons continued to say that just by three votes of the board, you could dissolve this DATV; all it takes is three votes. You can dissolve it or you can replace any of them (access corp. members) that you appointed just by three votes at any meeting so that's a lot of authority; they are just asking that the board doesn't involve themselves with the responsibility of having to run an access corporation because it's not that simple. They have a good crew on board right now that can handle that.

Mr. Malliaros indicated that there was a motion on the floor with no second.

Mr. DiRocco said he will second the motion; he said the explanation is under discussion and said he is not quite sure it needs to be done but doesn't think it harms anything so that is why he will second the motion.

Ms. Richardson asked if all amendments are posted, is it because of open meeting law or because of the bylaws.

Mr. Lyons explained that the open meeting law doesn't really pertain unless the Selectmen were the ones rather than the Board of Directors; if the Selectmen decided that they didn't want to have a Board of Directors and run it yourselves, then it would really fall under that particular law. He said although they still post everything; there is no requirement that they have to only because of the way the non-profit corporation is set-up. Mr. Lyons noted that the membership are all sent the amendments ahead of time, anyone in town can join and be a member and said again, there is nothing in there that is really a problem and said they wouldn't do something like that anyway.

**The motion to grant the (two) requests of the DATV Board of Directors passed by a unanimous vote (4-0-1) of those members voting. Mr. Zimini abstained from voting.**

PUBLIC HEARING/MUDDY RIVER COFFEE & CONVENIENCE, INC., GEORGE W. LABONTE, III, MANAGER, 197 MERRIMACK AVENUE –  
Application for Wine & Malt Beverages Packaged Goods Store License/New License approved by June 2010 Town Meeting & House Bill H 4962 - The  
Chairman opened the public hearing by reading aloud the legal notice that appeared in the Lowell Sun on October 2, 2010.

Mr. LaBonte addressed the board and stated he would like to thank the board and the Town of Dracut for this opportunity. Mr. LaBonte proceeded to explain the process he went through to obtain the Wine & Malt License for his establishment beginning with the approval of Town Meeting and concluding with it being signed into law by the Governor on September 15<sup>th</sup>, 2010 allowing this board to grant an additional wine & malt license.

Mr. Cox said it appears that this gentleman has done everything that the law has asked him to do and it has been approved by the State House as well as the Governor so he certainly intends to support it.

Mr. Zimini asked how long that business has been running there.

Mr. LaBonte said this current business has been there for about five months and noted that he put a petition together and received approximately three hundred signatures of support from patrons of the store and also from the surrounding community. Mr. LaBonte submitted the petition to the board.

Mr. Zimini asked how many employees he had there.

Mr. LaBonte replied that he has five employees at present and is looking to hire two more and the majority of his employees are from the neighborhood.

Mr. Zimini commented that he (LaBonte) has done an outstanding job fixing up that whole building; the restaurant next door is a very good restaurant and said he does not have a problem with this at this point and will be voting in favor. Mr. Zimini also asked if those employees serving will be over eighteen years of age and TIP certified. Mr. LaBonte said he will be taking the course and being an attorney, he is very knowledgeable about what the requirements are and the laws and the statute in the Commonwealth. They have a no tolerance policy regarding the sale of retail cigarettes and will use the same type of policy with the sale of alcohol as they do with cigarettes.

There was no one recorded present to speak either in favor of or opposed to this petition.

On a motion by Mr. Cox and seconded by Mr. Zimini, **it was unanimously voted to close the public hearing.**

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On a motion by Mr. Cox and seconded by Mr. DiRocco, **it was unanimously voted to approve the application for a Wine & Malt Packaged Goods Store**

**license to Muddy River Coffee & Convenience, Inc. located at 197 Merrimack Avenue.**

Sesame Street Residents – Mr. Malliaros noted that the residents had called to get on the agenda however the residents in attendance indicated they would pass.

AGENDA ITEMS - WMT Inc. d/b/a Chubby's, Wayne Fantasia – 361 Tyngsboro Road – Request for Common Victualler License (postponed from meeting of September 28<sup>th</sup>) – Wayne Fantasia and Mike Dubois were present.

Mr. Malliaros recapped that they had applied for a common victualler's license and the reason the applicant is here tonight is because there was some brush removal which is thinks is now before the Conservation Commission; this board had a site inspection and viewed the area. Mr. Malliaros said it looked like they were trying to clean the place up. Mr. Fantasia added that they were just trying to help the neighborhood out.

Mr. DiRocco said he feels the site inspection went very well; several people from the neighborhood were there.

Mr. Fantasia said they were not the ones who hired someone to do the brush removal, it was actually Lakeshore Realty. He said there is a connection between Mike (Dubois) and his wife Mary and said that is a completely separate entity from his business. Mr. DiRocco said it appeared that the neighborhood was very pleased with what was happening. Mr. Fantasia said that Mary will actually be taking care of that through Lakeshore Realty. Mr. DiRocco said he mentions this because he feels it was a pretty good meeting and the neighborhood was happy with the outcome. Mr. DiRocco added that the board didn't shut them down; they (board) felt this was the best way to do it and feels it worked out for the best.

**Mr. DiRocco moved to approve the common victualler license. Mr. Cox seconded the motion.**

Under discussion, Mr. Zimini said that he is one that was very concerned about what was going on there. Having that put in front of us at that meeting and seeing there was a neighborhood problem, he stood up to make sure that neighborhood would be protected. Right or wrong, he didn't know what was going on up there so he wanted to see it. Mr.

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Zimini said he didn't make the scheduled site inspection but he did go by on his own before then and said quite frankly, he didn't think it was a big deal and

doesn't think what was done there is bad. The bottom line is he will take precautions for any neighborhood, listen and then make a decision. Following some additional comments, Mr. Zimini said he doesn't think there is a problem and will be happy to vote for this tonight.

Mr. Fantasia said he really appreciates that the Selectmen took the time to go out there and take a look. Mr. DiRocco said he felt that was the best route to go; had they been shut down they would have lost some of their stock so it was best to go out there, take a look and then make a decision.

Ms. Richardson said she feels Mr. Zimini made a good point as she feels it's important with any business to make sure that the neighborhood is happy and feels that it is very important that businesses and neighborhoods work well together. A brief discussion continued about the clean-up process. Mr. Malliaros also commented that while there on the site inspection, he noticed the excessive speed of cars and indicated he would address it with the Chief.

**The motion to approve the common victualler license passed unanimously.**

Subway 2 by 203 Inc., Ana Berrios, 1724 Lakeview Avenue – Request for Common Victualler's License (Under New Management) – Mr. Malliaros stated that the policy will be from now on if it's a brand new business that's never existed before, they will be required to come before the board and tell us what's going on; but if it's a transfer of an existing business and once they get their Board of Health issues straightened out, they won't have to be here.

Motion by Mr. DiRocco and seconded by Mr. Zimini, **it was unanimously voted to approve.**

Ruth Shaw, Dracut – Requests appointment to Dracut Cultural Council – Motion by Mr. Cox and seconded by Mr. DiRocco to approve.

Under discussion, Mr. Zimini said that he went on the website to see what the makeup was of that particular committee and noticed that it wasn't listed. He wondered why it is not listed and feels all the committees should be on there so anybody can look and see who is on

these various committees and who can be contacted if anyone has any questions. Mr. Zimini requested that Mr. Edwards follow-up on this.



**It was unanimously voted to appoint Ruth Shaw to the Dracut Cultural Council.**

Paul Bettencourt, Dracut – Requests appointment to the Affordable Housing Partnership Committee – Motion by Mr. Cox and seconded by Ms. Richardson to approve.

Under discussion, Mr. DiRocco said that he met this gentleman and said he seems like someone who just really wants to get involved.

**The motion to appoint Mr. Bettencourt passed unanimously.**

Subcommittee Reports – Public Safety Subcommittee – It was noted that the next subcommittee meeting regarding the Centraville Sportsmen Club will be held on October 28<sup>th</sup> at 6:30 p.m. at the Central Fire Station.

New Business – Mr. Zimini asked Mr. Edwards, with regard to the Sidewalk Program, if he is aware of any thought being given to a sidewalk being put in on Parker Avenue from the school west towards the elderly complex. Mr. Zimini said he had the occasion to speak with a couple of elderly people from there and said he never realized that there is no sidewalk there for them; but thinks there is one from the Parker Avenue School down.

Mr. Edwards said there is a small section missing between the bridge as you're heading east off of Lakeview.

Mr. Zimini said he doesn't feel it is that big of a distance and perhaps is something that can be done through the DPW to improve that area and allow the elderly to have adequate sidewalks. Mr. Edwards commented on what he feels has been an incredible job done by the DPW; a lot of progress has been made in expanding the sidewalks in town. Following some additional discussion, Mr. Zimini said he realizes it opens a can of worms when you start talking about different neighborhoods but he thinks the elderly should be a priority.

Veterans Park – Ms. Richardson asked if there have been any more issues about the neighborhood near the walkway to Veteran's Park. There had been some discussion earlier this summer about some problems with kids and is wondering if anything else has been heard.

Mr. Malliaros said he does not recall any but noted that someone had petitioned that they are concerned about their children not being able to ride

their bikes at Veterans Park which is strictly prohibited. He said that is probably for a good reason because people are walking and don't want to get "run over" by little bikes but the person's point was they need a place to learn how to ride a bike.

Mr. Edwards commented that that was addressed; he's not sure if it is sufficient but there is a gate behind the concession stand at Veterans and when that parking area is not needed, a situation is set up where they gate that off and they can practice their bike riding in that back parking lot. He said it may not be ideal but at least they are trying to offer something that will work for everybody. It was noted that that information was communicated to the person who wrote the letter.

The Chairman read the Community Calendar.

Adjournment – Motion by Mr. Cox and seconded by Mr. DiRocco, **it was unanimously voted to adjourn the meeting at 8:00 p.m.**

BOARD OF SELECTMEN

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George A. Malliaros, Chairman

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Joseph DiRocco, Jr., Vice-Chairman

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Cathy Richardson, Clerk

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Robert O. Cox

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John J. Zimini